

Lowell Barr, Plaintiff.

vs.

In Circuit Court of Baldwin County, Ala.

Coca-Cola Bottling Company,

Defendant.

Comes the plaintiff and amends his complaint heretofore filed in this case to read as follows, to-wit:-

Count One.

The Plaintiff, Lowell Barr, claims of the defendant, The Coca-Cola Bottling Company One Thousand Dollars for that on to-wit:- February 15, 1937 plaintiff bought a bottle of coca-cola, which had been manufactured and bottled by defendant at the plant in Mobile, Alabama, and that defendant did <sup>negligently</sup> sell, deliver and distribute or caused to be <sup>negligently</sup> sold, distributed and delivered said bottle of coca-cola in Bay Minette, Baldwin County, Alabama.

That on the above said date plaintiff bought of one of the dealers in Bay Minette, Alabama, one M. D. Orem, a bottle of coca-cola containing a fly, which said bottle of coca-cola had been previously manufactured and bottled at the plant of defendant in Mobile, Alabama, and by said defendant through servants and employees, <sup>negligently</sup> sold, delivered and distributed in Bay Minette, Baldwin County, Alabama to one M. D. Orem, and by said Orem sold to plaintiff as aforesaid.

That plaintiff after drinking nearly all the contents of said bottle of coca-cola, discovered a fly in said bottle, and as the proximate result of <sup>the negligence of defendant</sup> drinking said coca-cola out of said bottle, which had been <sup>negligently</sup> sold, delivered or distributed or caused to be sold, delivered or distributed by defendant in Baldwin County, Alabama, became greatly nauseated, rendered sick and was unable to work for some time, and his health was greatly impaired, could not eat for several days and suffered great physical and mental pain and anguish, all to his damage in the sum of one thousand dollars, for which he brings this suit, and all of which injury to plaintiff was caused by the negligence of defendant as aforesaid.

Count Two.

The plaintiff claims of the defendant, the Coca-Cola Bottling Company the sum of One Thousand Dollars for that the defendant by and through servants, employees and or operators of the bottling plant of defendant, acting in the line and scope of their employment, negligently allowed a fly to get into one of the bottles of coca-cola, manufactured and bottled by defendant and that prior to ~~on~~ February 15, 1937, defendant <sup>negligently</sup> sold, delivered or distributed or <sup>negligently</sup> caused to be sold, delivered or distributed a bottle of coca-cola containing a fly to one M. D. Orem, a coca-cola dealer in Bay Minette Baldwin County, Alabama.


That on to-wit:- February 15, 1937, plaintiff bought of said M. D. Orem in Bay Minette, Baldwin County, Alabama, a bottle of coca-cola containing a fly, which said bottle of coca-cola was <sup>negligently</sup> sold, delivered and distributed or <sup>negligently</sup> caused to be sold, delivered and distributed by defendant, the Coca-Cola Bottling Company, to M. D. Orem, <sup>✓</sup> a dealer in coca-cola in Bay Minette, Baldwin County, Alabama.

That plaintiff, after purchasing said bottle of coca-cola as aforesaid, drank most of the liquid before he discovered the fly in said bottle of coca-cola, and as a proximate result <sup>of the negligent act of defendant</sup> of drinking the coca-cola containing said fly as aforesaid, which said bottle of coca-cola had previously been manufactured and bottled in the plant of defendant in Mobile, Alabama, and <sup>negligently</sup> sold, delivered and distributed or <sup>negligently</sup> caused to be sold, delivered and distributed in Baldwin County, Alabama by defendant, the Coca-Cola Bottling Company, plaintiff was greatly nauseated, rendered very ill, his health greatly impaired and he was caused great physical and mental pain and anguish, lost considerable time from his work, was not able to eat for some time on account of sickness caused by drinking said bottle of coca-cola containing the fly as aforesaid, all to his damage in the said sum of One Thousand Dollars. *All of which damage and injury to plaintiff was caused by the negligent acts of defendant in negligently selling, delivering and distributing said bottles of Coca-Cola as aforesaid -*

Count Three.

Plaintiff claims of the defendant, the Coca-Cola Bottling Company the sum of One Thousand Dollars for that defendant the Coca-Cola Bottling Company wilfully, wantonly and intentionally sold, delivered and distributed or caused to be sold, delivered and distributed in Bay Minette, Baldwin County, Alabama to M. D. Orem, a coca-cola dealer in Bay Minette, Alabama, a bottle of coca-cola containing a fly, which said bottle of coca-cola had previously been manufactured and bottled by the defendant, The Coca-Cola Bottling Company, at the plant in Mobile, Alabama, and sold and delivered and distributed or caused to be sold, delivered and distributed by the Coca-Cola Bottling Company, the defendant in Bay Minette, Baldwin County, Alabama. That by proper diligence and inspection, defendant could have discovered and detected said fly in the bottle of coca-cola. That plaintiff was induced to buy and did buy a bottle of coca-cola as aforesaid and drank most of it before he discovered the fly in said bottle of coca-cola sold by the Coca-Cola Bottling Company, as aforesaid.

That as a proximate result of the wilful, wanton and intentional and negligent acts of defendant, employees and or operators acting in the line and scope of their authority in failing to inspect, supervise and examine said coca-cola bottle to detect the said fly and in selling, delivering and distributing or causing to be sold, delivered and or distributed in Baldwin County, Alabama said bottle of coca-cola bought by plaintiff from a dealer in Bay Minette and sold to said dealer by The Coca Cola Bottling Company, the defendant, and plaintiff, after buying said bottle of coca-cola as aforesaid, drank most of the liquid before he discovered the fly, and as a proximate result thereof, plaintiff was rendered ill, his health greatly impaired, he could not eat for several days, was unable to work for some time and he suffered much physical pain and mental anguish, all to his damage in the said sum of One thousand Dollars.

  
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Attorney for Plaintiff.

We, the jury find for Defendant

Grindell

Terrence

RECORDED  
INDEXED  
JUL 31 1937

Joseph B. Bann  
County

Dea. - Ala. Rollings

Defendant

Arrested by

3rd day July 1937

Clark

July 30, 1937  
U.S. Court, Ark.

W.D. Ault  
Att'y for Plaintiff

Lowell Barr, Plaintiff.

vs.

Coca-Cola Bottling Company,

Defendants.

Brief of plaintiff as to right of plaintiff to sue in Baldwin County, Ala.

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The question is as to whether the cause of action arose in Mobile, Alabama or in Baldwin County, Alabama.

Section 10467 code 1923, provide that the defendant may be sued in the county of the residence of the defendant or in the county in which the act or omission complained of may have been done or may have occurred.

In Forbes vs. Rogers, 38 Southern page 843 it is held that the action was in tort and could be brought either in the county where defendant resided or where the tort was committed.

In Words and Phrases Vol. 2 pages 1015 et. seq., there is discussed fully what constitutes a cause of action, as follows:- "A cause of action may be said to consist of the right belonging to the plaintiff and some wrongful act or omission done by the defendant by which that right has been violated." "The elements of a cause of action are," First, the breach of duty owing by one person to another; second, the damages resulting to the other from the breach. "The commission or omission of an act by the defendant, and damage to the plaintiff in consequence thereof must unite to give a good cause of action." There must be a duty and breach of it." "Cause of action as used in statutes fixing the jurisdiction of courts according to where the cause of action arose means that which creates the necessity for bringing the action."

In 89 South. page 64, it is said, "It has been observed that the real ground of liability of the seller to an ultimate consumer is, more properly speaking, a duty one owes to the public not to put out articles to be sold upon the markets for use injurious in their nature, of which the general public have no means of inspection to protect themselves." 24 R.C. L. Sec. 806 page 514 and other cases. In that same case, it is said, "The duty not negligently to injure is due by the manufacturer, in a case of the particular character of the one under consideration, not merely to the dealer to whom he sells his product, but to the general public for whom his wares are intended."

One of the leading bottling cases is that of Whistle Bottling ~~Co.~~ Co. vs Searson, and a careful reading of this case shows that the real cause of action is not in the manufacture of the beverage but in the placing on the market such beverages not fit for consumption and deleterious to health of the public. -92 South. page 657, 89 South. page 64.

In 116 South. page 1147 and 118 South 498-9, it is stated that, "The presence of foreign matter deleterious to health sealed up in a bottle of soft drink is evidence of negligence."

The case of Macrum vs. Security Trust & Savings Co. 129 South page 74, discusses fully and very ably all phases of all these tort cases and cites the bottling cases heretofore mentioned. To discuss this case fully would make this brief too long, but will ask that your Honor will read this case carefully in connection with the other cases cited in this brief and you will clearly see the relation of the parties, the duty of the seller and the where the injury occurred etc.

In the case of Ala. Great Southern R. Co. vs. Carroll, 11th. South 803, while it is a case of suit in one state for injury in another, I think it is pertinent in this case. In this case it is said that the fact that the negligence which produced the casualty transpired in Alabama will not take the case out of the general rule. It is further said, "It is admitted or at least can not be denied that negligence of duty unproductive of damming results will not authorize or support a recovery." The fact, which created the right to sue, - the injury- without which confessedly no action would lie anywhere, transpired in the state of Mississippi. It was in that State, therefore, necessarily that the cause of action, if any, arose."

This case is also cited in 138 South. 415, and 126 South 397, Miss case.

In all the bottling cases cited, the plaintiff and defendant lived in the same county and the question of jurisdiction did not arise.

In the Forbes vs. Rogers case, the plaintiff and defendant lived in different counties.

#### Argument.

Can it be shown that the injury to plaintiff was caused by the negligence of defendants in Mobile, Alabama or by the negligence of defendants in placing the soft drink containing the fly upon the market in Baldwin County?

There was no damming result or injury to plaintiff by the manufacture or bottling in Mobile, for if defendants had manufactured and bottled foreign matter in every bottle of the liquid in Mobile, but never sold same ~~or put~~.

or put same on the market in Baldwin County, it would not have damaged plaintiff in any way. In other words, it is the sale in Baldwin County and not the manufacture or bottling in Mobile that injured plaintiff. As a matter of fact, the allegation as to defendants being a manufacturer or bottler in Mobile is not necessary, as this is no part of the cause of action, but merely showing the business of plaintiff, and if defendants whether they bottled the liquid or not, sold same in Baldwin County and thereby injured plaintiff, they would be liable and the cause of action would lie in that county where the sale was made and plaintiff was injured.-- 11 South Page 803.

Taking the case of 11 South page 803 as applicable to counties instead of states, and quoting from this decision, " The fact which created the right to sue-the injury- transpired in Baldwin County." It was in that county, therefore, necessarily that the cause of action arose."

By a careful consideration and reading of the cases cited in this brief, we feel sure you will find that the injury to plaintiff and the damifying results to plaintiff were caused by the selling and placing on the market in Baldwin County of the beverage complained of and not the negligence in manufacturing or bottling same in Mobile, Alabama, and that consequently the cause of action for selling, distributing and delivering said product in Baldwin County caused the injury, and that the cause of action arose in Baldwin County and that this court has jurisdiction in this cause.

  
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Attorney for plaintiff.

Bob: Please  
show this to  
Hawkins & Hare  
J.H.H.

TWENTY-FIRST JUDICIAL CIRCUIT  
OF ALABAMA

F. W. HARE, JUDGE  
R. L. JONES, CIRCUIT SOLICITOR  
M. R. FARISH, COURT REPORTER  
MONROEVILLE, ALABAMA

August 30th, 1937.

Messrs Smith & Johnson,

Mobile, Ala.

Gentlemen:- Attention Mr. P. C. Fountain.

Barr Vs. Coca-Cola Bottling Co.

I have just finished reading briefs on your plea in abatement in the above case.

As pointed out in your very able brief, Mr. Hawkins seems to have elected to sue for the tort of distributing unwholesome beverages rather than the manufacture of unwholesome beverages. Unquestionable the tort of negligent manufacture was committed in Mobile, but this he seems to waive and to rely upon the wrongful distribution in Baldwin County.

While the complaint may be demurrable, I construe the gravamen to be the wrongful distribution of the beverage and not its negligent manufacture. This makes his case more difficult to maintain for the reason that he cannot rely upon the doctrine of res ipsa loquiter, and places the burden upon him of coming forward with evidence to the effect that the defendants knew, or should have known, of the existence of the fly in the bottle; but, if he chooses to tackle the more difficult horn of the dilemma that's his business.

None of the file was sent me except the amended complaint but I presume the question of the sufficiency of your pleas arose on demurrer. I hold the pleas bad. Do not know whether there will be further pleading or not,--presume there will be--so cannot have the case marked at issue until hearing further from you.

Am sending Mr. Hawkins a copy of this letter.

Regards,

Yours very truly,

F. W. Hare



Complaint.

Lowell Barr, Plaintiff.

vs.

Coca-Cola Bottling Company,

a Corporation, Defendant,

In Circuit Court of Baldwin County.

Count One.

The plaintiff, Lowell Barr, claims of the defendant, Coca-Cola Bottling Co. One Thousand Dollars, for that on to-wit.: February 15, 1937, plaintiff bought a bottle of coca-cola, which had been bottled by defendant at its plant in Mobile, Alabama and sold to one of its dealers at Bay Minette, Alabama. That plaintiff after drinking nearly all of the contents of said bottle discovered a fly in said bottle.

The plaintiff as the proximate result of drinking said said coca-cola out of said bottle became greatly nauseated, rendered sick and was unable to work for some time, and his health was greatly impaired, he suffered great physical and mental pain and anguish, all to his damage in the sum of One thousand dollars, as aforesaid.

Count Two.

The plaintiff claims of the defendant the sum of One thousand dollars for that the defendant by and through its servants, employees and or operators of the bottling plant of defendant, acting in the line and scope of their employment, negligently allowed a fly to get into one of the bottles of coca-cola, bottled by defendant, and that on to-wit.: February 15, 1937, plaintiff bought a bottle of coca-cola bottled by defendant, its servants or employees acting in the line and scope of their employment, ~~negligently allowed a fly to get into one of the bottles of coca-cola, bottled by defendant, and that on to-wit.: February 15, 1937, plaintiff~~ ~~to get into one of the bottles of coca-cola, bottled by defendant, and that on to-wit.: February 15, 1937, plaintiff~~ ~~to get into one of the bottles of coca-cola, bottled by defendant, and that on to-wit.: February 15, 1937, plaintiff~~ and containing a fly, and plaintiff drank most of the liquid in said bottle before he discovered a fly, and as a proximate result of drinking the coca-cola containing said fly, plaintiff was greatly nauseated, rendered sick, and his health greatly impaired, he was caused great mental and physical pain and suffering and anguish, caused to lose considerable time from his work, and not able to eat for several days on account of ~~sickness~~ ~~sickness~~ sickness <sup>from</sup> the fly in said bottle of coca-cola, all to his damage in the said sum of One thousand dollars.

Count Three.

Plaintiff claims of the defendant the sum of One thousand dollars for that defendant wilfully, wantonly and intentionally placed or allowed to be

put or placed a fly into one of the bottles of coca-cola , bottled by defendant at its plant in Mobile, Alabama, either before or after being placed in the bottle. And that plaintiff bought a bottle of said coca-cola on to-wit.:- February 15, 1937, which contained a fly and plaintiff drank coca-cola out of said bottle, and as a proximate result of the willful, wanton and intentional negligence of defendant and or its servants, employees or operators, acting in the line and scope of their authority, plaintiff was rendered ill, his health greatly impaired, he could not eat for several days, he was unable to work for some time and he suffered much physical and mental pain and anguish, all to his damage in the said sum of \$1000 for which he brings this suit.

W. H. Hawkins

Attorney for Plaintiff.

Plaintiff demands a trial by jury.

W. H. Hawkins

Attorney for plaintiff.

THE STATE OF ALABAMA,  
Baldwin County.

No. \_\_\_\_\_ CIRCUIT COURT

March 4, 1937

To Any Sheriff of the State of Alabama :

You are hereby commanded to summon

Coca-Cola Bottling Company, a Corporation

to appear and plead, answer or demur, within thirty day from the service hereof, to the Complaint filed in the Circuit Court of Baldwin County, State of Alabama at Bay Minette, Ala., against it

as Defendant .. by Lowell Barr

Plaintiff

Witness my hand this 4th day of March 1937

*R. B. Duck*

Clerk.

COMPLAINT

Plaintiff versus

The Plaintiff claims of the Defendant

Dollars, due by

Plaintiff's Attorney.

RECORDED 8-43  
Original

No. \_\_\_\_\_

THE STATE OF ALABAMA  
BALDWIN COUNTY

CIRCUIT COURT

Lowell Barr

PLAINTIFF

vs.

Coca-Cola Bottling Company  
Corporation.

DEFENDANT

Summons and Complaint

Filed, March 4th, 193 7

R. S. Dick, Clerk.

Defendant Lives at

W. H. Hawkins,  
Plaintiff's Attorney.

Defendant's Attorney

MOORE PRINTING CO., BAY MINETTE, ALA.

RECEIVED IN OFFICE  
March 5th, 1937  
W. H. Hawkins, Sheriff

I have executed this Writ  
this March 5th, 1937

by leaving a copy of the within Summons and  
Complaint with  
L. A. Lowell  
Agent for  
The Coca Cola  
Bottling Co.

W. H. Hawkins, Sheriff.  
Tommy Bryson, Deputy Sheriff.

Complaint.

Lowell Barr, Plaintiff.

vs.

Coca- Bottling Company *An* In Circuit Court of Baldwin County.

*unincorporated Association*  
*or Organization*  
Defendant,

Count One.

The plaintiff, Lowell Barr claims of the defendant *An unincorporated Association or Organization* Coca-Cola Bottling Co. One Thousand Dollars, for that on to-wit.:- February 15, 1937, plaintiff

bought a bottle of coca-cola, which had been bottled by defendant at its plant in Mobile, Alabama and sold to one of its dealers at Bay Minette, Alabama. That plaintiff after drinking nearly all of the contents of said bottle discovered a fly in said bottle.

The plaintiff as the proximate result of drinking said said coca-cola out of said bottle became greatly nauseated, rendered sick and was unable to work for some time, and his health was greatly impaired, he suffered great physical and mental pain and anguish, all to his damage in the sum of One thousand dollars, as aforesaid.

Count Two.

The plaintiff claims of the defendant the sum of One thousand dollars for that the defendant by and through *their* ~~its~~ servants, employees and or operators of the bottling plant of defendant acting in the line and scope of their employment, negligently allowed a fly to get into one of the bottles of coca-cola, bottled by defendant and that on to-wit.:- February 15, 1937, plaintiff bought a bottle of coca-cola bottled by defendant *their* ~~its~~ servants or employees acting in the line and scope of their employment, ~~negligently allowed a fly~~

~~to get into one of the bottles of coca-cola, bottled by defendant and that on to-wit.:- February 15, 1937, plaintiff~~ *and containing*  
a fly, and plaintiff drank most of the liquid in said bottle before he discovered a fly, and as a proximate result of drinking the coca-cola containing said fly, plaintiff was greatly nauseated, rendered sick, and his health greatly impaired, he was caused great mental and physical pain and suffering and anguish, caused to lose considerable time from his work, and not able to eat for several days on account of ~~sickness~~ *sickness* by the fly in said bottle of coca-cola, all to his damage in the said sum of One thousand dollars.

Count Three.

Plaintiff claims of the defendant the sum of One thousand dollars for that defendant wilfully, wantonly and intentionally placed or allowed to be

It put or placed a fly into one of the bottles of coca-cola, bottled by defendant at its plant in Mobile, Alabama, either before or after being placed in the bottle. And that plaintiff bought a bottle of said coca-cola on to-wit.: - February 15, 1937, which contained a fly and plaintiff drank coca-cola out of said bottle, and as a proximate result of the wilful wanton and intentional negligence of defendant <sup>their</sup> and or ~~its~~ servants, employees or operators, acting in the line and scope of their authority, plaintiff was rendered ill, his health greatly impaired, he could not eat for several days, he was unable to work for some time and he suffered much physical and mental pain and anguish, all to his damage in the said sum of \$1000 for which he brings this suit.

*W. H. Hankins*

Attorney for Plaintiff.

THE STATE OF ALABAMA,  
Baldwin County.

No. \_\_\_\_\_ CIRCUIT COURT

193

To Any Sheriff of the State of Alabama:

You are hereby commanded to summon

Goose-Cola Bottling Company, an unincorporated association or organization, doing business in Baldwin County, Alabama.

to appear and plead, answer or demur, within thirty day from the service hereof, to the Complaint filed in the Circuit Court of Baldwin County, State of Alabama at Bay Minette, Ala., against

Defendant by them

Lowell Barr

Plaintiff

Witness my hand this 4th day of May

1937

R. L. Dick Clerk.

COMPLAINT

Plaintiff versus

The Plaintiff claims of the Defendant

Dollars, due by

Plaintiff's Attorney.

THE STATE OF ALABAMA,  
Baldwin County.

No. \_\_\_\_\_ CIRCUIT COURT

193

To Any Sheriff of the State of Alabama:

You are hereby commanded to summon

~~the~~ Coca-Cola Bottling Company, an unincorporated association or organization, doing business in Baldwin County, Alabama

to appear and plead, answer or demur, within thirty day from the service hereof, to the Complaint filed in the Circuit Court of Baldwin County, State of Alabama at Bay Minette, Ala., against

them

Defendant by

Lowell Bump

Plaintiff

Witness my hand this 4th day of May 1937

R. L. Dick Clerk.

COMPLAINT

Plaintiff versus

The Plaintiff claims of the Defendant

Dollars, due by

Plaintiff's Attorney.



287  
1

*Remission  
Lentique*

Amended Complaint

No. 344

THE STATE OF ALABAMA  
BALDWIN COUNTY

CIRCUIT COURT

Lowell Barr

PLAINTIFF

VS.

*20*  
Coca-Cola Bottling Company, an  
unincorporated Association.  
DEFENDANT

Summons and Complaint

Filed, May 4, 1937

R. A. Duck, Clerk.

Defendant Lives at

Plaintiff's Attorney,

Defendant's Attorney

MOORE PRINTING CO., BAY MINETTE, ALA.

RECORDED *2-88*

RECEIVED IN OFFICE

1937

Sheriff

I have executed this Writ

this June 26, 1937  
by leaving a copy of the within Summons and  
Complaint with

W. L. Bellingrath  
pres. Coca-Cola  
Bottling Company,  
an unincorporated  
association

R. P. Galehouse, Sheriff.

Allie Lantique, Deputy Sheriff.

LOWELL BARR,

Plaintiff,

versus

COCA-COLA BOTTLING COMPANY,  
a corporation,

Defendant.

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

AT LAW

COME W. D. Bellingrath and Mrs. W. D. Bellingrath, separately and severally, and individually and doing business under the firm name and style of Coca-Cola Bottling Company, and appear solely and specially for the purpose as herein set out, and that purpose only, and for no other purpose, and not submitting to the jurisdiction of the court, and show unto the Court as follows:

That they are doing business individually under the firm name and style of Coca-Cola Bottling Company and operate said business in Mobile, Alabama.

The said W. D. Bellingrath and Mrs. W. D. Bellingrath suggest to the Court that Coca-Cola Bottling Company is not a corporation, and is not a legal entity; WHEREFORE, they pray that this action be abated. All of which they are ready to verify and will ever pray, etc.

W. D. BELLINGRATH  
MRS. W. D. BELLINGRATH

By Smith & Johnston  
Their Attorneys

STATE OF ALABAMA )  
COUNTY OF MOBILE )

Before me, the undersigned authority, personally appeared Walter K. Smith, who, upon being first duly sworn, deposes and says that he is employed by W. D. Bellingrath and Mrs. W. D. Bellingrath, individuals doing business under the firm name and style of Coca-Cola Bottling Company, and that he is General Manager of the said Coca-Cola Bottling Company, in Mobile, Mobile County, Alabama; that he has knowledge of the facts stated in the foregoing plea in abatement, and that the same are true.

Sworn to and subscribed before me  
this 5th day of April, 1937.

Mrs. M. M. Robertson  
Notary Public, Mobile County, Ala.

RECORDED

*Duck*

Lowell Barr

8-5-4

Plaintiff

vs-

Coca-Cola Bottling Company  
a corporation,

Defendant .

*Plea in Abatement*

\*\*\*\*\*

IN THE CIRCUIT COURT OF  
BALDWIN COUNTY , ALABAMA .

\*\*\*\*\*

*Filed April 5 1937*  
*R. Duck*  
*Chm*

Lowell Barr, Plaintiff.

vs.

In Circuit Court of Baldwin County,  
Alabama No. 344.

Coca-Cola Bottling Company,  
an unincorporated Association  
or Organization, Defendant.

Comes the plaintiff in the above entitled cause and demurs to pleas of  
abatement filed in this cause on to-wit:- July 15th. 1937, separately and  
severally on the following grounds to-wit:-

First.

Because said pleas fail to allege that the cause of action did not arise in  
Baldwin County, Alabama.

Second.

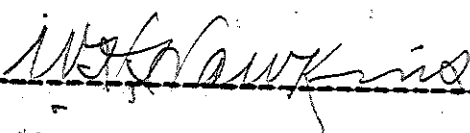
Because said pleas fail to allege that the Coca-Cola Bottling Company did  
not sell, deliver and distribute their product in Baldwin County, and did  
not sell, deliver and distribute coca-cola in bottles to M. D. Orem from  
whom plaintiff bought the bottle of coca-cola containing a fly.

Third.

Because said pleas fail to show that The Coca-Cola Bottling Company is not  
doing business in Baldwin County, Alabama, or that the cause of action did  
not arise in Baldwin County, Alabama.

Fifth.

Because defendants hold themselves out as an association or organization  
by advertising The Coca-Cola Bottling Company with Walter D. Bellingraph  
as President, Walter K. Smith, as General Manager and William C. Dorgan Jr  
as Secretary-Treasurer.

  
Attorney for Plaintiff.

Plaintiff,

IN THE CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA

AT LAW

Defendant.

Demurrers having been sustained to the several special pleas heretofore filed by W. D. Bellingrath and Mrs. Bessie M. Bellingrath, doing business under the firm name and style of Coca-Cola Bottling Company, now therefore, not admitting the existence of any person or legal entity as Coca-Cola Bottling Company, an unincorporated association or organization, but expressly denying the same, comes Smith & Johnston, attorneys for Coca-Cola Bottling Company, a partnership composed of W. D. Bellingrath and Mrs. Bessie M. Bellingrath, and demur, separately and severally, to each and every count of the complaint, as last amended, upon the following separate and several grounds, to-wit:

1. For that said count states no cause of action.

2. For that said count does not aver any duty owing from the defendant to the plaintiff.

3. For that said count does not aver the violation of any duty owing from the defendant to the plaintiff.

4. For aught that appears from said count, the alleged bottle of coca-cola was not negligently manufactured by the defendant.

5. For that it does not appear from said count that the defendant negligently distributed the alleged bottle of coca-cola.

6. For aught that appears from said count, plaintiff was not injured as a proximate result of any negligence of the defendant, its servants, agents, or employees.

7. For aught that appears from said count, the defendant owed the plaintiff no duty not to manufacture, bottle, sell, deliver, or distribute said coca-cola, as alleged in said count.

8. For aught that appears from said count, the alleged coca-cola was not negligently manufactured by the defendant or its servants, agents, or employees, while acting within the line and scope of their employment.

9. For aught that appears from said count, the alleged coca-cola was not negligently sold by the defendant or any of its servants, agents,

or employees, under such circumstances as to make the defendant responsible therefor.

10. For that it does not appear from said count that the alleged coca-cola was negligently distributed by the defendant or its servants, agents, or employees, under such circumstances as to render the defendant responsible for the alleged injuries.

11. For that it does not appear from said count whether the defendant is sued as a corporation or a partnership.

12. For that it does not appear from said count that the defendant or any one of its servants, agents, or employees, while acting within the line and scope of their employment, had knowledge of or notice that the alleged fly was in said alleged bottle of coca-cola.

13. For aught that appears from said count, plaintiff was not injured as a proximate result of any negligence of the defendant or its servants, agents, or employees.

14. For that said count is duplicitous.

15. For that said count attempts to allege two different and distinct causes of action against the defendant.

16. For aught that appears from said count, defendant, its servants, agents, or employees, had no knowledge that the alleged fly was in the alleged coca-cola at the time it is alleged defendant distributed or sold said coca-cola, and said count avers no facts which would put the defendant, its servants or agents, upon notice or inquiry as to the condition of said coca-cola at the time alleged in the complaint.

17. For that said count is so vague and indefinite as that it cannot be ascertained therefrom what cause of action the plaintiff intends to rely upon.

18. For that said count does not sufficiently advise the defendant as to what cause of action it is called upon to defend.

19. Because said count purports to be a willful or wanton count and does not allege that the defendant, its servants, agents, or employees, wilfully or wantonly injured plaintiff.

20. For that said count attempts to charge the defendant with willful, wanton, and intentional negligence, and for aught that appears therefrom, the defendant, its servants, agents, or employees, did not wilfully, wantonly, or intentionally injure plaintiff.

21. For that said count attempts to set out with particularity wherein or how the defendant, its servants or agents, were guilty of negligence, and the facts averred do not constitute negligence as a matter of law.

22. For that said count attempts to allege with particularity the willful, wanton, and intentional acts or conduct relied upon, and the facts alleged do not constitute willful, wanton, or intentional negligence as a matter of law.

23. For aught that appears from said count, the defendant owed the plaintiff no duty to inspect the alleged bottle of coca-cola before selling, delivering, or distributing the same.

Smith & Johnston  
Attorneys ~~for Coca-Cola Bottling Co.~~  
for Coca-Cola Bottling Co.  
a partnership composed of W. D.  
Bellingrath & Mrs. Bessie M. Bellingrath

RECORDED  
IN THE CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA  
AT LAW

LOWELL BARR,

Plaintiff,

versus

COCA-COLA BOTTLING COMPANY,

Defendant.

345

DEMURRERS.

to complaint

*Filed May 14 1938  
R. S. Duck  
Clerk*

SMITH & JOHNSTON  
ATTORNEYS FOR DEFENDANT



LOWELL BARR,

Plaintiff,

versus

COCA-COLA BOTTLING COMPANY,  
an unincorporated association  
or organization,

Defendant.

IN THE CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA

AT LAW

No. 344

COME W. D. Bellingrath and Mrs. Bessie M.

Bellingrath, separately and severally and individually, and doing business under the firm name and style of Coca-Cola Bottling Company, and appear solely and specially for the purpose as herein set out and for that purpose only and for no other purpose, and not submitting to the jurisdiction of the Court, and file the following separate pleas in abatement, to-wit:

1. That they both have a permanent residence in Mobile County, State of Alabama, and are now and were at the time this suit was filed residents of Mobile County, Alabama, and neither of them reside in Baldwin County, Alabama; that they are doing business individually under the firm name and style of Coca-Cola Bottling Company, and operate a plant in Mobile County for manufacturing and bottling a beverage known as Coca-Cola, and do not manufacture or bottle Coca-Cola in Baldwin County, Alabama; that the Coca-Cola Bottling Company which they operate is neither an unincorporated association nor an unincorporated organization within the meaning of the laws of the State of Alabama, but is a partnership composed of W. D. Bellingrath and Mrs. Bessie M. Bellingrath, who do business individually under the firm name and style of Coca-Cola Bottling Company; all of which they are ready to verify.

WHEREFORE, they pray the judgment of the Court that this suit be abated.

2. That they both have a permanent residence in

Mobile County, State of Alabama, and are now residents of Mobile County, Alabama, and neither of them reside in Baldwin County, Alabama; that they are doing business individually under the firm name and style of Coca-Cola Bottling Company and operate a plant in Mobile County, Alabama for manufacturing and bottling a beverage known as Coca-Cola, and do not manufacture or bottle Coca-Cola in Baldwin County, Alabama, and were not manufacturing or bottling Coca-Cola in Baldwin County, Alabama at the time the alleged cause of action complained of in each count of the complaint arose; that the Coca-Cola Bottling Company which they operate is neither an unincorporated association nor an unincorporated organization within the meaning of the laws of the State of Alabama, but is a partnership composed of W. D. Bellingrath and Mrs. Bessie M. Bellingrath, who do business individually under the firm name and style of Coca-Cola Bottling Company; that the alleged act or omission complained of in each count of the complaint was not done and did not occur in Baldwin County, Alabama; all of which they are ready to verify.

WHEREFORE, they pray the judgment of this Court that this suit be abated or that the summons and complaint be quashed.

3. That they both have permanent residence in Mobile County, State of Alabama, and are now and were at the time this suit was filed residents of Mobile County, Alabama, and neither of them reside in Baldwin County, Alabama; that they are doing business individually under the firm name and style of Coca-Cola Bottling Company, and operate a plant in Mobile County, Alabama for manufacturing and bottling Coca-Cola, and do not manufacture or bottle Coca-Cola in Baldwin County, Alabama, and did not manufacture or bottle Coca-Cola in Baldwin County, Alabama, during the time mentioned in any one of the counts of the complaint; that the Coca-Cola Bottling Company which they operate is a partnership composed of W. D. Bellingrath and Mrs. Bessie M.

Bellingrath, who do business individually under the firm name and style of Coca-Cola Bottling Company; that if they manufactured or bottled the bottled Coca-Cola referred to in the complaint and each count thereof the same was manufactured and bottled in Mobile County, Alabama, and not in Baldwin County, Alabama; all of which they are ready to verify.

WHEREFORE, this Court has no jurisdiction of this suit, and they pray the judgment of the Court that this suit be abated.

W. D. BELLINGRATH  
MRS. BESSIE M. BELLINGRATH,  
individually and doing business  
under the firm name and style of  
Coca-Cola Bottling Company,

By Smith & Johnston  
Their Attorneys

STATE OF ALABAMA    )  
                              )  
COUNTY OF MOBILE    )

Before me, the undersigned authority, personally appeared W. D. BELLINGRATH, who, upon being first duly sworn deposes and says that the facts stated in the foregoing special pleas are true.

W. D. Bellingrath

Subscribed and sworn to before  
me this 14th day of July, 1937.

Mrs. M. M. Robertson  
Notary Public, Mobile County, Alabama

U.S. 8-90  
Coca-Cola Bottling Co.  
St. Louis.  
No. 344

PLEAS IN ABATEMENT

Filed July 13 1937  
Robert  
Pulver to Comptroller  
of and  
Oct 19 1937  
C. R. Pulver

Plaintiff,

IN THE CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA

AT LAW

Defendant.

Bellingrath, separately and severally and individually, and doing business under the firm name and style of Coca-Cola Bottling Company, and appear solely and specially for the purpose as herein set out, and for that purpose only, and for no other purpose, and not submitting to the jurisdiction of the Court, and show unto the Court as follows:

1. Because it is apparent upon the face of the record that the only service purported to have been had is upon a purported corporation.

3. Because there is no proper service upon the defendant named in the complaint, as amended.

4. Because there has been no personal service upon either the said W. D. Bellingrath or the said Mrs. Bessie M. Bellingrath.

5. For that there is no legal service shown.

6. Because there is no service of process shown as will support a proper judgment.

7. For that the said W. D. Bellingrath and Mrs. Bessie M. Bellingrath are both residents of the State of Alabama and no service of process is shown to have been made upon them, or either of them.

WHEREFORE, they pray that the process, or attempted process, be quashed, and the return be set aside, and will ever pray, etc.

W. D. BELLINGRATH and MRS.  
BESSIE M. BELLINGRATH,

By Smith & Johnston  
Their Attorneys

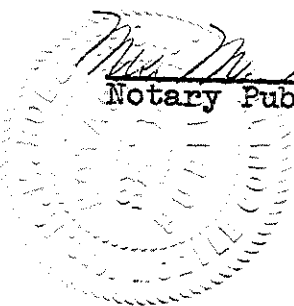
STATE OF ALABAMA )  
COUNTY OF MOBILE )

Before me, the undersigned authority, personally appeared Walker K. Smith, who, upon being first duly sworn, deposes and says that he has knowledge of the facts stated in the foregoing motion, and that the same are true.

Walker K. Smith

Subscribed and sworn to before me  
this 30<sup>th</sup> day of April, 1937.

M. M. Robertson  
Notary Public, Mobile County, Alabama



RECORDED  
IN THE CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA  
AT LAW

LOWELL BARR,

Plaintiff;

versus

COCA-COLA BOTTLING COMPANY,  
an unincorporated association  
or organization, doing busi-  
ness in Baldwin County, Alabama,

Defendant.

M O T I O N

to quash service of process  
and set aside the return

*Filed May 1st 1937*  
*R. DeLoach*  
*clerk*

SMITH & JOHNSTON

Attorneys for W. D. Bellingerath  
and Mrs. Bessie M. Bellingerath

Lowell Barr, Plaintiff.

vs.

In Circuit Court, Baldwin County, Ala.

Coca-Cola Bottling Company,

a Corporation, Defendant.

Comes the plaintiff and amends his complaint heretofore filed in this cause and each count thereof separately and severally, and the caption thereof to read as follows:-

"Lowell Barr, Plaintiff vs. Coca-Cola Bottling Company, an unincorporated Association or Organization, doing business in Baldwin County, Alabama!"



Attorney for Plaintiff.



*Original* #344  
RECORDED  
*Duck - 8-3-4*  
mailed  
Lowell Barr, Plaintiff.

vs.  
Coca-Cola Bottling Company.  
Defendant.

-----  
Amendment to Complaint.  
-----

Filed this the 20th. day  
of April 1937.

*R. S. Duck*  
-----  
Clerk.

W. H. Hawkins,  
Atty. for Plaintiff.

No. 381 CIRCUIT COURT

Spring Term, 1939

You are hereby commanded, That of the goods and chattels, lands and tenements of

to the suit, the sum of \_\_\_\_\_ Dollars,  
besides \$134.45 \_\_\_\_\_ Dollars, costs of suit;  
upon which Judgment an Execution has been issued and returned by the Sheriff, "No property found."

Clerk of said Court, and make return of this Writ and the Execution thereof, according to law.

Witness my hand this 16 day of June 1939

R. S. Dorch Clerk

[illegible]

No. ~~344~~ 344

Page

THE STATE OF ALABAMA,  
BALDWIN COUNTY  
CIRCUIT COURT

*Lowell Barr*

Plaintiff

vs.

*Coca-Cola Bottling Co.*

Defendant

Civil Execution for Costs  
Against Plaintiff

Costs . . . . . \$ 24.45

Civil Fee Book *Consol* Page *344*

Execution Docket " Page "

Filed *June 16*, 193*9*

*R.S. Duch* Clerk.

*W H Hawkins*  
Plaintiff's Attorney

*Smith & Johnston*  
Defendant's Attorney

COLLECTION COSTS FROM

The State of Alabama, {  
BALDWIN COUNTY

I hereby certify that the within  
and costs in this case are correct, and there was  
waiver of exemption as to personal prop-  
erty under the Constitution and Laws of Ala-  
bama.

This \_\_\_\_\_ day of \_\_\_\_\_ 193\_\_\_\_\_

Clerk.

Received in office *6-16-39*

193\_\_\_\_\_

*W.R. Stuart*

Sheriff

Sheriff's Execution Docket, Page \_\_\_\_\_

Sheriff's Fee Book, \_\_\_\_\_ Page \_\_\_\_\_

*Returned 8-3-39 no property  
of Lowell Barr found  
in Baldwin County*

*W.R. Stuart  
sheriff*

*S,*

Sheriff

THE STATE OF ALABAMA,  
Baldwin County.

By virtue of the within execution, I have at \_\_\_\_\_

o'clock, --- M., this \_\_\_\_\_ day of \_\_\_\_\_ 193\_\_\_\_\_ levied

y that if you believe the evidence  
of the defendant .